Supreme Court, U.S.
FILED
MAY 7 1993
OFFICE OF THE CLERK

No. 92-1364

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

DAVID CASSIDY and RAY HASSLER,
Petitioners,

v.

WESTERN SYSTEMS, INC. and LEE M. HOLMES,
Respondents.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Pursuant to Rule 15.6 of the United States Supreme Court Rules, Petitioners make the following points in reply to Respondents' Brief in Opposition:

A. The arguments made by Respondents further demonstrate the need for this Court's clarification and guidance as to the issues raised by this appeal.

Despite the Respondents' claim that there is harmony between this Court's decision in *Chick Kam Choo v. Exxon*, 487 U.S. 140 (1988), and the interpretation of *Chick Kam Choo* by the Circuit Courts, there can be no doubt that a conflict exists between the opinion of the Ninth Circuit and the opinion of other Circuits. The Ninth Circuit expressly acknowledged this conflict, stating in its opinion that:

> In the wake of *Choo*, five circuits have concluded that the relitigation exception is now limited to issues actually litigated by the federal court.
>
> * * *
>
> **We disagree with those Circuits** which have concluded that the relitigation exception is limited to issues "actually litigated" in a prior court proceeding.

958 F.2d at 870 (emphasis added).

Moreover, Respondents concede, at a minimum, that there is a conflict between the opinions of the Ninth and the Fifth Circuits with respect to the proper interpretation of *Chick Kam Choo*. In their Brief in Opposition To Petition for a Writ of Certiorari ("Brief"), Respondents recognize that the Ninth Circuit's opinion conflicts with the Fifth Circuit's decision in *Farias v. Bexar County Bd. of Trustees*, 925 F.2d 866 (5th Cir. 1991). Brief at 20. Thus, Respondents' own brief contravenes its argument that "Other Circuit Decisions Cited by the Petitions Do Not Conflict With the Ninth Circuit's Opinion." Brief at 20.

Respondents' summary of the cases cited by the Petitioners obscures the differences between these cases and the Ninth Circuit's opinion. Respondents' description of *Staffer v. Bouchard Transp. Co., Inc.*, 878 F.2d 638 (2nd Cir. 1989) is particularly misleading. Although the facts of the case are accurately represented, Respondents fail to describe the Second Circuit's narrow interpretation of *Chick Kam Choo*:

> The language and facts of *Chick Kam Choo* make clear that the part of the relitigation exception to the Anti-Injunction Act that is based on concerns of res judicata is more narrowly tailored than the doctrine of res judicata. **The relitigation exception does not protect the full res judicata effect of a federal court's judgment; rather, it protects only matters that actually have been decided by a federal court.** [cites omitted.] Undoubtedly, res judicata can bar claims that might and should have been raised but were not [cite omitted], but, for Anti-Injunction Act purposes, only "relitigation" can be enjoined.

878 F.2d at 643 (emphasis added). This interpretation is in clear and incontroverted conflict with the Ninth Circuit's broader reading of *Chick Kam Choo*. The Ninth Circuit, dismissing the Second Circuit's position, found it "unduly restrictive." 958 F.2d at 870.

The conflicts between the Circuits, and the issues of law which were not settled by *Chick Kam Choo*, make this an appropriate case for certiorari review. As Rule 10.1 of this Court advises,

> A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter....
>
> * * *

> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court....

United States Supreme Court Rules, Rule 10 (1993).

The issue presented in this case is an important one, relating to the fundamental interests of comity, equity and federalism. Additionally, as shown in this petition, and as conceded by the Respondents in their Brief, a conflict exists among the Circuits regarding the proper resolution of this issue. Consequently, this case clearly is of a type which is described in Rule 10 as appropriate for certiorari review.

B. The "egregious circumstances" alleged by the Respondents do not affect the appropriateness of certiorari review.

In their Brief, Respondents allege that the Petitioners have "unclean hands," have demonstrated "bad faith," and have shown a "petulant refusal to accept the judgments of the federal courts." Brief at 11. Petitioners strongly deny these allegations, and submit that these are issues which are inappropriately raised unless and until the merits of this appeal are briefed. At this time, each party, naturally, has a different view of the issues presented in this Petition.

Moreover, even if Respondents' allegations are assumed to be true, certiorari review is appropriate for this case. The "facts," as alleged by the Respondents, do not diminish the conflict between the decisions of the Circuits or lessen the need for clarification of this important issue.

C. The scope of *Chambers v. Nasco, Inc.* is not as broad as Respondents imply.

Petitioners raised the issue of whether the federal courts have the power to sanction parties who bring suit in state or territorial courts. Petition at 35. In response, Respondents cite *Chambers v. Nasco, Inc.*, 111 S.Ct. 2123 (1991) for the proposition that the federal courts do have such power. However, *Chambers* does not directly support that proposition.

In *Chambers*, this Court addressed the appropriateness of sanctions imposed by the District Court against a party for misconduct before the Federal Communications Commission, the Court of Appeals, and this

Court. This Court upheld the sanctions, stating that "[a]s long as a party receives an appropriate hearing, ...the party may be sanctioned for abuses of process occurring beyond the courtroom...." 111 S.Ct. at 2139.

However, although the abuses referred to in *Chambers* occurred outside the District Court courtroom, the abuses still occurred within the federal court system and at a federal agency. *Chambers* did not involve, and this Court did not address in that case, the crucial issues of federalism involved in determining whether a federal court has the authority to sanction parties who are before a state or territorial court. Consequently, *Chambers* does not obviate the need for this Court to consider the power of a federal court to sanction parties who bring suit in a state or territorial court.

Respectfully Submitted,

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